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September 15, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 28, 2005

Case Number: TSO-0245

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that restoration is warranted in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a Notification Letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. The security concern cited in the Letter involves the individual's excessive use of alcohol.

The Notification Letter stated that the individual was arrested in September 2000 for driving while intoxicated (DWI). In November 2003, the individual was sent to a DOE consultant psychiatrist for an evaluation. His evaluation was documented in a December 1, 2003 report to the DOE. In that

¹/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

evaluation, the DOE consultant psychiatrist diagnosed the individual as using alcohol habitually to excess. The consultant psychiatrist indicated that he believed that the individual drinks to the point of intoxication at least once a week. In the report, the DOE consultant psychiatrist recommended that in order to demonstrate rehabilitation from excessive alcohol use, the individual should decrease his alcohol intake to "moderate" for at least six months. The consultant psychiatrist defined "moderate" intake as "no more than one mixed drink, one glass of wine or one beer per hour and not more than three in a 24-hour period." According to the Notification Letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J).

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.²

At the hearing, the individual was represented by an attorney. He testified on his own behalf, and presented the testimony of his wife, a co-worker/friend and his AA sponsor. The DOE Counsel presented the testimony of the DOE consultant psychiatrist.

II. Applicable Standards

In these personnel security review cases, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). Therefore, once a security concern has been found to exist, the individual must provide evidence to rebut, refute, explain, extenuate or mitigate that concern. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

2/ On July 18, 2005, the individual's attorney informed me that, due to a scheduling conflict, he would be unable to attend the hearing, which was set for August 12. The hearing was therefore rescheduled for July 25 and, as a matter of convenience, Thomas L. Wieker took the testimony of the witnesses. Mr. Wieker fully concurs with the findings and determination reached in this Decision.

III. Hearing Testimony and Analysis

This case is one that is resolved very simply. All the testimony indicates that the individual has mitigated the Criterion J security concern. The individual testified convincingly that in early December 2004, when he received notification from the DOE that his access authorization was suspended due to the Criterion J security concern, he immediately ceased all use of alcohol. Transcript of Hearing (Tr.) at 49. At the time of the hearing, he had therefore maintained abstinence for a period of nearly eight months. Within several days after beginning his abstinence, he started to attend AA meetings, and have daily contact with a sponsor. Tr. at 49-52. He stated that he has received a great benefit from AA and intends to continue his association with that organization. Tr. at 59-61. He testified: "I can't think of any good reason to drink and I have a lot of reasons not to drink again." Tr. at 55, 56.

The individual's wife confirmed that the individual had not used alcohol since December 2004, that he has been regularly attending AA meetings since that time, and that he calls his sponsor every day. Tr. at 6-14. The individual's friend/co-worker, who has known him about seven years, gave the same account of the individual's abstinence and knew of his involvement with AA. Tr. at 18-24. The individual's AA sponsor believed that the individual is committed to AA and to abstinence. Tr. at 26-38.

Based on this testimony, the DOE consultant psychiatrist was convinced that the individual has been abstinent from alcohol for the stated period. Tr. at 64. The consultant psychiatrist stated: "You know in my report I said that you could drink moderately and that would have been reasonable. I'm much more impressed that you stopped. . . ." Tr. at 62. He further indicated: "I commend you for going [to AA meetings] as many times as you have" *Id.* He believed that by abstaining from alcohol and participating in AA, the individual had demonstrated that he was rehabilitated. Tr. at 64.

As is evident from the above testimony, the individual, by his abstinence and AA attendance, has exceeded the recommendation of the consultant psychiatrist. I am persuaded that the individual has shown he is rehabilitated from habitual use of alcohol to excess.

IV. CONCLUSION

As the foregoing indicates, the individual has resolved the Criterion J security concerns cited in the Notification Letter. It is therefore my decision that his access authorization should be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: September 15, 2005